1994

Doxey Hatch Medical Center, Amber Peterson v. Utah Department of Health, Division of Health Care Financing : Reply Brief

Utah Court of Appeals

Douglas W. Springmeyer, Jan Graham, attorneys for appellee.
William L. Crawford; attorney for appellant.

IN THE UTAH COURT OF APPEALS

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DOXEY-HATCH MEDICAL CENTER/ AMBER PETERSON,	)	
Petitioner-Appellant,	)	
v.	)	No. 940543-CA
UTAH DEPARTMENT OF HEALTH, Division of Health Care Financing,	)	
Respondent-Appellee.	)	

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REPLY BRIEF OF PETITIONER-APPELLANT DOXEY-HATCH MEDICAL CENTER/AMBER PETERSON

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PETITION FOR REVIEW FROM THE FINAL AGENCY ORDER OF THE UTAH DEPARTMENT OF HEALTH, DIVISION OF HEALTH CARE FINANCING, JOANN GALLEGOS, DIRECTOR

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ARGUMENT PRIORITY CLASSIFICATION PER UTAH R. APP. P.29(b):14

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940543

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REPLY BRIEF OF PETITIONER-APPELLANT
DOXEY-HATCH MEDICAL CENTER/AMBER PETERSON

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STATEMENT OF FACTS

Petitioner's Brief and Respondent's Brief set forth the relevant facts in detail. However, Petitioner takes exception with a portion of Respondent's Statement of the Case where, at page 3, Respondent states that preadmission authorization to readmit Amber is "required by applicable federal and state Medicaid requirements." As pointed out in Petitioner's Brief at pages 15 and 18, there is no federal requirement that there be preadmission authorization upon a return to a nursing home from a hospital.

ARGUMENT

Petitioner almost totally ignores Petitioner's Brief wherein the argument is made that under the facts of the instant case the denial of reimbursement was unreasonable and irrational in this case. Rather, respondent simply states that Rule 455-9-6G

required the filing of Form 10A upon return to the nursing home facility from a hospital stay in excess of three days. Respondent's Brief simply relies upon Rule 455-9-6G and the ruling in South Davis Community Hospital Inc./Romero v. Department of Health, Division of Health Care Financing, 869 P.2d 979 (Utah App. 1994) ("Romero") without giving any real analysis to the application of the ruling in that case to the facts of this case. Furthermore, Respondent states that because of the holding in Romero, Petitioner's appeal must be deemed to be frivolous and therefore subject to sanctions under Rule 33, Utah Rules of Appellate Procedure. As shown by Petitioner's Brief and the Reply Brief, Respondent's Brief and position is wrong on all counts.

POINT I

PETITIONER'S APPEAL WAS NOT FRIVOLOUS

Respondent claims that Doxey-Hatch raises precisely the same legal issue that was resolved in the Romero case, to-wit: "DHCF's discretion to interpret and authority to implement its utilization review procedures to avoid losing federal matching funds for Utah's Medicaid program" and "whether DHCF could reasonably deny Medicaid reimbursement to a provider/facility based on the facility's failure to comply with preadmission authorization requirements." (Respondent's Brief at page 14.) Based on Respondent's view that Romero has dealt with these issues in the past, Respondent argues that Petitioner's appeal is

frivolous and subject to sanctions pursuant to Rule 33, Utah Rules of Appellate Procedure.

However, Respondent fails to properly interpret the Romero case. In Romero, the court stated that, under the applicable standards for review, it must be determined whether DHCF exceeded the bounds of reasonableness and rationality. The facts of the instant case, as well demonstrated in Petitioner's Brief, are substantially different from those in the Romero case. The main difference is that in the Romero case, Romero had never gone through a preadmission screening procedure whereas in the instant case Amber Peterson had been prescreened and had been on Medicaid for at least two years prior to the period of time in issue. Additional facts pertaining to the unreasonableness of Respondent's position and differentiating this case from Romero are set forth in Petitioner's Brief.

When the standard of review of DHCF's action is "reasonableness and rationality," as stated in Romero, each case is obviously very fact-specific. In other words, the question must be asked whether DHCF acted reasonably and rationally in this particular case based on these particular facts.

Furthermore, Petitioner's Brief addresses additional issues not raised in Romero, to-wit: that DHCF's decision to deny reimbursement was inconsistent with prior rulings (page 20) and that the rule, when read literally, does not require the submission of a new Form 10A upon return to a nursing home from a hospital (page 22). Respondent has, for inexplicable reasons,

elected not to even address these arguments in its brief. Since these additional issues are not covered by Romero, this Appeal certainly cannot be frivolous.

As shown by the above, and contrary to the assertions in Respondent's Brief (pages 14 and 15), there are reasonable legal and/or factual questions which this court has not previously determined in Romero. Consequently, this appeal is not frivolous.

POINT II

CONTRARY TO RESPONDENT'S ALLEGATIONS, DHCF'S DENIAL WAS NOT REASONABLE OR RATIONAL

In Point II of its Brief, Respondent simply makes the argument that DHCF reasonably denied reimbursement and that there are no facts or circumstances that make it unreasonable for denying reimbursement. Respondent's Brief simply ignores, for the most part, all of Petitioner's facts and arguments regarding why the actions of DHCF were unreasonable and irrational. Respondent's argument is simply: (a) Rule R455-9-6G requires a new Form 10A upon return to the hospital after a three-day hospital stay; (b) no form was submitted; and (c) therefore, no reimbursement.

Obviously, it is not appropriate for Petitioner to restate all of these facts and arguments in this Reply Brief. However, Petitioner strongly urges the Court to consider the facts, circumstances, and arguments set forth in Petitioner's Brief and, particularly, the facts that Amber was previously screened and

approved for Medicaid, had been on Medicaid for two years, had no change in her condition or treatment following her return from the hospital, Petitioner has had only a few instances in the past when it did not comply with the Form 10A requirement, that the failure to submit a new Form 10A was due to extenuating circumstances easily understandable by any reasonable person, that DHCF has acknowledged in correspondence that Petitioner has always been conscientious in doing its paper work and that it would like to grant relief, that in over 9 million Medicaid days in the last five years DHCF has granted relief in only two or three cases, and that DHCF has, in fact, adopted a new rule subsequent to the occurrence that is the subject matter of this case giving providers some leeway in submitting the Form 10A. All of these factors indicate that it would be reasonable and fair to allow reimbursement in this case and, on the other hand, to deny the same would be unreasonable.

Beginning at page 9 of its Brief, Respondent gives an Overview of Utah's Medicaid and Utilization Review Programs. It quotes from Utah Code Ann. §26-18-2.3(1) to the effect that DHCF has been given the responsibility of implementing the Medicaid program "in an efficient, economical manner" and that DHCF shall establish a program to "safeguard against unnecessary or inappropriate use of Medicaid service, excessive payments, and unnecessary or inappropriate hospital admissions or lengths of stay." Respondent's Brief also quotes from §26-18-2.1 wherein it states that DHCF shall deny any claim for services that fail to

meet criteria established by DHCF "concerning medical necessity appropriateness." Concerning these two sections of the Code, it is obvious from the facts of the case that it was not necessary to deny reimbursement to Petitioner in order to "safeguard against unnecessary or inappropriate use of Medicaid services, excessive payments, or unnecessary or inappropriate hospital admissions or lengths of stay" because Amber was clearly certified for Medicaid and there is no question that her level of care and treatment was appropriate for her circumstances. There is no question, as required by §26-18-2.1, that Petitioner did meet the criteria established by DHCF for "medical necessity appropriateness."

Respondent also quotes Utah Admin. Code Rule 455-9-6G which is the rule that requires a new Form 10A after a hospital stay of more than three days. However, as set forth at page 22 of Petitioner's Brief, that is not exactly what that rule provides. That rule states that "preadmission authorization will not be required for a hospital admission when the recipient returns to the original nursing care facility within three consecutive days . . . of admission to the hospital" [emphasis added]. Thus, this rule simply doesn't apply to this case because we are not talking about a preadmission authorization for a hospital admission.

POINT III

RULE R455-9 EXCEEDS FEDERAL REQUIREMENTS AND IS UNREASONABLE

In Point III of its Brief, Respondent tacitly acknowledges that Rule 455-9 is in excess of the requirements of federal law regarding preadmission screening. In this regard, see pages 15 and 18 of Petitioner's Brief wherein the CCH Medicare and Medicaid Guide is quoted as stating that federal law does not require preadmission screening upon return to a nursing home facility from a hospital and that the preadmission screening requirement only applies to new admissions. Respondent simply relies upon the statutory language which gives DHCF the discretion to implement criteria to safeguard against unnecessary utilization of care and services by Medicaid providers. However, Respondent again conveniently ignores the fact that Amber was qualified for Medicaid for two years following an initial prescreening and subsequent utilization and need reviews, and that her level of care did not change after she returned to Doxey-Hatch from the hospital. In no way would Utah's Medicaid funds be jeopardized, as alleged by Respondent (pp. 13, 14), by eliminating or relaxing the rule on preadmission screenings or at least the timeliness of submitting Form 10A (as has been done as a matter of fact by the adoption of the new rule allowing 30 "grace" days per year). Respondent also ignores the facts recited in Petitioner's Brief regarding the total number of Medicaid patients in Utah, the total number of Medicaid days in

Utah, and the fact that DHCF has only granted two or three exceptions to its strict rules in the past which, Petitioner argues, is proof in and of itself that these rules are unduly strict, unreasonable, and irrational.

POINT IV

DHCF'S DECISION IS ARBITRARY AND CAPRICIOUS BECAUSE IT IS INCONSISTENT WITH PRIOR CASES IN WHICH PAYMENT WAS ALLOWED

As set forth beginning at page 20 of Petitioner's Brief, the Court should find that the decision by DHCF to deny payment is inconsistent with prior cases in which payment was made and is therefore arbitrary and capricious. Respondent's Brief does not address this issue because, presumably, Respondent knows that they have granted exceptions to this hard and fast rule in the past of requiring a Form 10A after a readmission from a hospital. Based on the prior exceptions and inconsistent rulings, DHCF's ruling should be reversed.

CONCLUSION

For the foregoing reasons, DHCF's decision denying Doxey-Hatch Medicaid reimbursement for the period September 6, 1993 through November 30, 1993 should be reversed.

REQUEST FOR ORAL ARGUMENT/PUBLISHED DECISION

Because there are factual differences in the instant case from the Romero case, oral argument is requested. Furthermore, it is requested that the decision in this case be published.

Respectfully submitted this 10 day of April, 1995.

William L. Crawford
Attorney for Petitioner

MAILING CERTIFICATE

I hereby certify that on the 10th day of April, 1995, I mailed two (2) true and correct copies of the foregoing REPLY BRIEF, postage prepaid, to the following:

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Assistant Attorney General
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Salt Lake City, UT 84114

WILLIAM L. CRAWFORD
Attorney for Petitioner

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